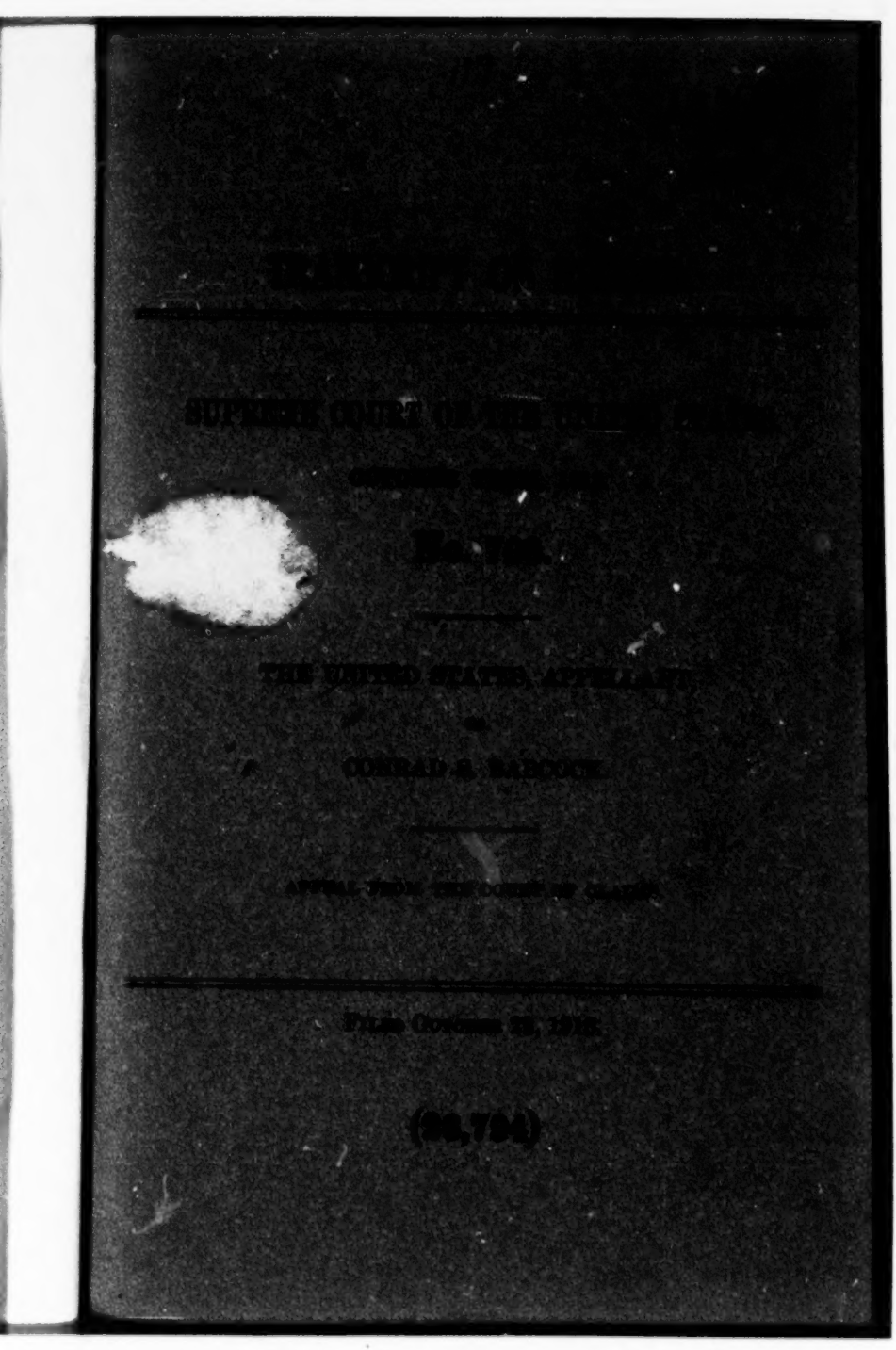

(26,794)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 708.

THE UNITED STATES, APPELLANT,

vs.

CONRAD S. BABCOCK.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 10, 1919.

1 I. *Petition.*

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

Petition.

(Filed August 29, 1913.)

To the Honorable the Court of Claims:

The claimant aforesaid respectfully represents:

I. That he was at the time of the loss hereinafter set forth, a captain, First Cavalry, U. S. Army, in the military service of the United States and was a mounted officer and, under the regulations, was required to keep and did keep a horse for use in the military service, of the value of $300.

II. That while on duty in the service as aforesaid, claim-
2 ant sustained damage, without any fault or negligence on his part, by the loss of said horse in military service and by reason of an exigency or necessity thereof, under the following circumstances:

Said horse died at the Presidio of San Francisco, California, in July, 1910, of indigestion caused by eating the government ration of oats and barley fed him at that post.

III. That claimant claims reimbursement for said loss in accordance with Act of March 3, 1885 (27 Stat. L. 350), and Section 3482, Revised Statutes, as amended by the act of June 22, 1874 (1 Supp. R. S. 37); that this claim has been presented to the War or Treasury Department but not allowed because of the decision of the Comptroller of the Treasury, holding that such claims are barred.

IV. That no other action than as aforesaid has been had on this claim in Congress or by any of the Departments; that the claimant is the sole owner of this claim and the only person interested therein; that no assignment or transfer of this clam, or any part thereof
3 or interest therein, has been made; that the claimant is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States. And the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment for $300.

KING & KING,
Attorneys of Record.

DISTRICT OF COLUMBIA, *ss:*

Archibald King, being duly sworn, deposes and says that he is one of the attorneys for the claimant; that he has read the above petition; and that the matters therein stated are true to the best of his information and belief.

ARCHIBALD KING.

4 Subscribed and sworn to before me this 28th day of August, 1913.

[SEAL.] MARIE A. SEARLES,
Notary Public.

5 II. *General Traverse.*

Court of Claims.

No. 32586.

CONRAD S. BABCOCK

vs.

THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

6 III. *History of Proceedings.*

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

This case was argued and submitted on April 12, 1917.

On April 30, 1917, judgment for claimant was entered, amount to be suspended until the coming in of reply of War Department.

7 IV. *Argument and Submission.*

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

This case was reargued and submitted on the 8th day of January, 1918, by Mr. William B. King for the claimant, and Mr. George M. Anderson for the Defendants.

8 V. *History of Further Proceedings.*

On January 21, 1918 the court filed conclusion of law and entered judgment for plaintiff in the sum of $200.00.

On March 7, 1918 the defendants filed a motion for findings of fact.

On March 11, 1918 the defendants' motion for findings of fact was allowed and findings of fact were filed.

On March 14, 1918 the claimant filed a motion for a new trial—being a motion for an additional finding. This motion was submitted to the court on March 15, 1918.

On this motion the court, on March 18, 1918, made the following order:

Allowed in part and overruled in part. Former findings withdrawn, and new findings this day filed. Judgment to stand.

These findings of fact and conclusion of law are as follows:

9 VI. *Findings of Fact and Conclusion of Law.*

Filed March 18, 1918.

Court of Claims of the United States.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of Fact.

I.

At the time of the loss hereinafter set forth the plaintiff, Conrad S. Babcock, was a captain in the First Cavalry, United States Army, a mounted officer.

II.

In July 1910 while plaintiff was on duty at the Presidio of San Francisco, Calif., he had in the military service there a bay gelding.

10

III.

Said horse was lost in the military service aforesaid under the following circumstances:

The Government furnished as the forage ration barley with the awns on it and the horse died of strangulation of the intestines from eating such forage at said place. The loss was without fault or negligence on the part of the plaintiff.

IV.

A claim was filed in the office of the Auditor for the War Department on November 26, 1910, and was disallowed on July 19, 1911, on the ground that "as the death of officer's horse was not caused by any exigency of the service, nor from a cause incident to or produced by the military service, but was the result of a disease to which all horses are subject, no reimbursement can be made under the act of March 3, 1885."

V.

It has been decided by the Secretary of War that the private
11 horse in question was reasonable, useful, necessary, and proper for the plaintiff to have had in his possession while in quarters, engaged in the public service, in line of duty.

VI.

The value of said private horse was $200.

Conclusion of Law.

Upon the foregoing facts the court heretofore concluded that the plaintiff therein was entitled to recover judgment against the United States in the sum of $200. It was therefore adjudged and ordered by the court that the plaintiff recover of and from the United States the sum of two hundred dollars (200).

See opinion in the case of Andrews et al. v. The United States, 52 C. Cls. 373.

12 VII. *Judgment of the Court.*

In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 21st day of January, A. D., 1918, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that Conrad S. Babcock, as aforesaid, shall have and recover of and from the defendants, The United States, the sum of Two hundred dollars ($200).

By THE COURT.

13 VIII. *Defendants' Application for and Allowance of an Appeal.*

From the judgment rendered in the above-entitled cause on the 18th day of March, 1918, in favor of claimant, the defendants, by their Attorney General, on the 23d day of April, 1918, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed April 23, 1918.

Ordered: That the above appeal be allowed as prayed for.

EDWARD K. CAMPBELL,
Chief Justice.

October 21, 1918.

14 In the Court of Claims.

No. 32586.

CONRAD S. BABCOCK

v.

THE UNITED STATES.

I, Samuel A. Putman, chief clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-

entitled cause; of the argument and submission of same; of the findings of fact and conclusion of law; of the judgment of the court; of the application for, and the allowance of, appeal to the Supreme Court of the United States.

In Testimony Whereof I have hereunto affixed the seal of said court at Washington City this 21" day of October, 1918.

[Seal Court of Claims.]

SAML. A. PUTMAN,
Chief Clerk Court Court of Claims.

Endorsed on cover: File No. 26794. Court of Claims. Term No. 708. The United States, appellant, vs. Conrad S. Babcock. Filed October 22d, 1918. File No. 26794.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 915.

THE UNITED STATES, APPELLANT,

vs.

HERBERT B. HAYDEN.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 14, 1919.

(27001)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 915.

THE UNITED STATES, APPELLANT,

vs.

HERBERT B. HAYDEN.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

Number lost.	Items.	Actual value.	Certified value.
4	pajamas	$6.00	$6.00
1	pillow	2.00	2.00
1	razor	2.50	2.50
1	saddle—whippey	42.00	42.00
1	pr. shoulder straps	4.50	4.50
2	pr. shoulder knots	24.00	20.00
2	pr. spurs	3.00	3.00
1	pr. stirrups	2.50	2.50
1	shirt, O. D. (to order)	5.40	3.00
1	saber	3.00	3.00
8	shirts	24.00	16.00
6	stocks—uniform	1.50	1.50
4	shirts—dress	8.00	8.00
4	sheets	2.00	2.00
24	prs. socks	12.00	12.00
1	trunk	30.00	15.00
4	uniforms, O. D. & khaki	89.00	50.00
2	uniforms, white	20.00	12.00
12	suits underwear	12.00	12.00
1	watch	9.00	9.00
1	whip—riding (not certified)	5.00	
		449.90	330.00

3 *Civilian property.*

1	bicycle (not certified)		$25.00
1	pr. breeches	"	20.00
1	hat—Panama	"	10.00
1	hat—straw	"	2.50
1	pr. skates	"	5.00
6	neckties	"	12.00
1	suit	"	10.00

The numbers of the various items lost are stated in the first column. The true and actual value of the property lost is stated in the third column. The number of the different items certified by the Secretary of War to be reasonable, useful, necessary, and proper for the claimant to have is the same as the number claimed, except on three items, where the number certified by the Secretary is stated in parentheses after the item. The valuation placed upon the several items of property by the Secretary is stated in the fourth, or last, column. The last items, as noted, have not been certified to be reasonable, useful, necessary and proper.

3. A claim for said property was duly presented to the Auditor for the War Department, and the Secretary of War has furnished said auditor a certificate, as required by the statute, showing which of the articles lost were reasonable, useful, necessary, and proper for the claimant while in quarters engaged in the public service and in

the line of duty. All of the items claimed are so certified, except as indicated in the foregoing paragraph. The said claim was presented to the Auditor for the War Department within two years from the date of the loss, and under date of June 25, 1917, was examined and disallowed by certificate 442581 for the following reasons:

"As the property was not lost or destroyed by being shipped
4 on an unseaworthy vessel, nor by reason of the claimant giving his attention to saving property belonging to the United States, no reimbursement can be made."

From this decision the claimant appealed to the Comptroller of the Treasury who, under date of July 3, 1917, affirmed the auditor's action on the authority of the decision of the comptroller rendered May 7, 1917, in the case of Lieutenant Colonel Hugh J. Gallagher, which decision was to the effect that paragraph first in the act of March 3, 1885, was to be read as a proviso to the second and third paragraphs, and that there could be no recovery for losses under any circumstances other than those enumerated in paragraphs second and third.

4. The claimant claims reimbursement from the United States for the value of the property so lost or destroyed under the provisions of the following act of Congress approved March 3, 1885, 23 Stat., 350:

"That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service under the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the claimant.

"Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

"Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and
5 determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage:

"*Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered:

"*And provided further*, That this act shall not apply to losses sustained in time of war or hostilities with Indians:

"*And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion, shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters engaged in the public service in the line of duty:

"*And provided further*, That all claims now existing shall be presented within two years, and not after, from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction."

The claimant maintains that he is entitled to the actual value of those items of property which the Secretary of War has certified to the Auditor for the War Department as being reasonable, useful, necessary, and proper for him to have, and he therefore claims the actual value of said items, which amount to $425.07.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim or of any part thereof or interest therein has been made; the claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; the claimant has
at all times borne true allegiance to the Government of the
6 United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims $425.07.

KING & KING,
Attorneys for Claimant.

STATE OF VIRGINIA,
City of Norfolk, ss:

Herbert B. Hayden, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

HERBERT B. HAYDEN.

Subscribed and sworn to before me this 28th day of July, 1917.

[SEAL.] SIDNEY L. NUSBAUM,
Notary Public.

7 II. *General Traverse. Filed October 8, 1917.*

Court of Claims.

HERBERT B. HAYDEN
vs.
THE UNITED STATES. } No. 33832.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. *Argument and submission of case.*

On December 10 1918, this case was argued and submitted on merits by Mr. George A. King for the claimant and Mr. John E. Hoover for the defendants.

8 IV. *Findings of fact, conclusion of law. Entered December 16, 1918.*

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of fact.

I.

The plaintiff, Herbert B. Hayden, was at the time covered by this claim a first lieutenant, Battery C, 4th Field Artillery, and was stationed at Texas City, Tex., on duty with his regiment.

The camp was on low ground peculiarly exposed to inundation. August 16, 1915, a hurricane of exceptional violence and duration broke out on the coast of Texas, lasting through that day and the 17th and the 18th, driving the water from the bay up over the camp and totally wrecking and destroying all the tents as well as the wooden structures belonging to the Government. During said hurricane the plaintiff exerted himself to the utmost of his ability to save Government property, to save the lives of other officers and of their families, and to secure his own property from destruction. Notwithstanding all these efforts his tent and shack were swept away and all his personal property therein was destroyed or swept away by the waters. The loss was without fault or negligence on the part of plaintiff.

9 II.

Within two years of the occurrence of the loss or destruction of plaintiff's property he presented his claim as required by paragraph 726, Army Regulations, 1913, through military channels, accompanied by the report of a board of officers showing the full circumstances of the loss, and the same was forwarded by the Secretary of War to the Auditor for the War Department June 15, 1917.

July 19, 1917, the Secretary of War certified "that the following articles were reasonable, useful, necessary, and proper for First Lieut. (now Captain) Herbert B. Hayden, 4th Field Artillery, to have while in quarters engaged in the public service, in the line of duty, and that the price here set opposite each is fair and reasonable":

2 prs. boots	$20.00
1 belt, saber	3.50
1 pr. boots, polo pony	3.00
4 sets buttons, bronze and gilt	3.00
1 pr. breeches, O. D	8.00
1 pr. breeches, white	4.00
1 cap, O. D	4.00
1 cap, white	3.50

1	cord, campaign hat	$1.00
6	cloths, saddle	1.50
2	prs. gloves	3.00
1	hat, service	2.00
1	helmet, polo	3.00
1	kit, toilet	3.50
1	mess jacket, white, complete	15.00
2	mallets, polo	3.50
3	neckties, dress	1.50
1	overcoat, O. D	21.00
4	pajamas	6.00
1	pillow	2.00
	1 razor	2.50
10	1 saddle, whippey	42.00
	1 pr. shoulder straps	4.50
2	pr. shoulder knots	20.00
2	pr. spurs	3.00
1	pr. stirrups	2.50
1	shirt, O. D. (to order)	3.00
1	saber	3.00
8	shirts	16.00
6	stocks, uniform	1.50
4	shirts, dress	8.00
4	sheets	2.00
24	prs. socks	12.00
1	trunk	15.00
4	uniforms, O. D. and khaki	50.00
2	uniforms, white	15.00
12	suits underwear	12.00
1	watch	9.00
	Total	333.00

The value as so certified aggregates $333, which value the court finds to be fair and reasonable and not in excess of the true value of the articles at the time and place of loss.

The Auditor for the War Department disallowed the claim June 23, 1917, and the disallowance was affirmed by the Comptroller of the Treasury July 3, 1917.

Conclusion of law.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $333. It is therefore adjudged and ordered by the court that the plaintiff recover of and from the United States the sum of three hundred and thirty-three dollars ($333). See cases of Newcomber, 51 C. Cls., 408, and Andrews, 52 C. Cls., 373. Also XX Comp. Dec., 420.

11 V. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the sixteenth day of December, A. D. 1918, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the claimant, Herbert B. Hayden, as aforesaid, is entitled to recover, and shall have and recover, of and from the defendants, The United States, the sum of three hundred and thirty-three dollars ($333.00).

BY THE COURT.

VI. *Defendants' application for and allowance of an appeal.*

From the judgment rendered in the above-entitled cause on the 16th day of December, 1918, in favor of claimant, the defendants, by their Attorney General, on the 27th day of February, 1919, make application for and give notice of an appeal to the Supreme Court of the United States.

WILLIAM L. FRIERSON,
Assistant Attorney General.

Filed February 27, 1919.

Ordered: That the above appeal be allowed as prayed for.

March 3, 1919.

BY THE COURT.

12 Court of Claims.

No. 33832.

HERBERT B. HAYDEN

v.

THE UNITED STATES.

I, Sam'l A. Putman, chief clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the argument and submission of the case, of the findings of fact and conclusion of law, of the judgment of the court, of the application of the defendants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this fourth day of March, A. D. 1919.

[SEAL.]

SAM'L A. PUTMAN,
Chief Clerk Court of Claims.

(Endorsed on cover:) File No. 27001. Court of Claims. Term No. 915. The United States, appellant, vs. Herbert B. Hayden. Filed March 14th, 1919. File No. 27001.

Supreme Court of the United States.

October Term, 1918

THE UNITED STATES, *Appellant*,
v.
HERBERT B. HAYDEN. } No. 915.

MOTION TO PLACE ON SUMMARY DOCKET.

Now comes the appellee, Herbert B. Hayden, by his attorneys, and moves that this cause be placed on the summary docket on the ground that it involves a simple question of statutory construction as to whether the loss of certain property belonging to an officer in the Army in a flood comes within the terms of legislation providing payment for the loss of property by officers of the United States Army in the military service, and will require only a brief argument.

GEORGE A. KING,
WILLIAM B. KING,
WILLIAM E. HARVEY,
Attorneys for Appellee.

I concur in the above motion.

ALEX. C. KING,
Solicitor General.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES, APPELLANT,
v.
CONRAD S. BABCOCK. } No. 708.

THE UNITED STATES, APPELLANT,
v.
HERBERT B. HAYDEN. } No. 915.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In each of these cases the appellee is an Army officer and sues to recover the value of personal property claimed to have been lost or destroyed in the military service.

In No. 708 the property was a horse belonging to appellee which, it is claimed, died at the Presidio in California, in July, 1910, of indigestion caused by eating the Government ration of oats and barley fed him at the post.

In No. 915 the property consisted of clothing and other articles of personal property lost in a storm and

hurricane at Texas City, where the appellee was on duty.

STATUTES INVOLVED.

In both cases the claim is predicated on the act of March 3, 1885 (23 Stat., 350), which is as follows:

> That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:
>
> First. When such loss or destruction was without fault or negligence on the part of the claimant.
>
> Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.
>
> Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: *Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and

shall never thereafter be reopened or considered: *And provided further*, That this act shall not apply to losses sustained in time of war or hostilities with Indians: *And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion, shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty: *And provided further*, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction.

No. 915 is predicated wholly upon this statute. The petition in No. 708, however, is double-barreled, and the right to recover is also predicated on section 3482 R. S., as amended by the act of June 22, 1874 (1 Supp. R. S., 37), which is as follows:

SEC. 3482. Any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalryman, engaged in the military service of the United States, who sustains damage without any fault or negligence on his part, while in the service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, which dies of the wound, or which, being so wounded, is abandoned by order of his officer and lost, or who sustains damage by the loss of any horse by death or abandonment because of the unavoidable dangers of the sea, when

on board a United States transport vessel, or because the United States fails to supply transportation for the horse, and the owner is compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider is dismounted and separated from his horse and ordered to do duty on foot at a station detached from his horse, or when the officer in the immediate command orders the horse turned out to graze in the woods, prairies, or commons, because the United States fails to supply sufficient forage, and the loss is consequent thereon, or for the loss of necessary equipage, in consequence of the loss of his horse, shall be allowed and paid the value thereof, not to exceed two hundred dollars.

Act of June 22, 1874:

CHAP. 395. An act to amend an act entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," approved March third, eighteen hundred and forty-nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the act of March third, eighteen hundred and forty-nine, providing for the payment for horses and equipments lost by officers or enlisted men in the military service shall not be construed to deny payment to such officers or enlisted men, for horses which may have

been purchased by them in States in insurrection; and payment in any case shall not be refused where the loss resulted from any exigency or necessity of the military service, unless it was caused by the fault or negligence of such officers or enlisted men.

SEC. 2. That no claims under said section or this amendment thereto shall be considered unless presented prior to the first day of January, eighteen hundred and seventy-six.

The time for filing claims was afterwards extended as follows:

Act of January 9, 1883 (22 Stat., 401):

That the time for filing claims for horses and equipments lost by officers and enlisted men in the military service of the United States, which expired by limitation on the thirty-first day of December, eighteen hundred and seventy-five, be, and the same is hereby, extended to one year from and after the passage of this act; and that all such claims filed in the proper department before the passage of this act shall be deemed to have been filed in due time and shall be considered and decided without refiling.

SEC. 2. That all claims arising under the act approved March third, eighteen hundred and forty-nine, entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," and all acts amendatory thereof, which shall not be filed in the proper department within one year from and after the passage of this act, shall be forever barred,

> and shall not be received, considered, or audited by any department of the Government.

Section 2 of the act of August 13, 1888 (25 Stat., 437):

> That the limitation heretofore imposed by law on the presentation by officers or soldiers of claims for the loss of horses and equipments in the military services during the late war is hereby suspended for the period of three years.

Section 3482 above quoted is copied from section 1 of the act of 1849 referred to in the act of June 22, 1874, the only change being that certain provisos contained in the act of 1849 are omitted.

THE FACTS.

In No. 708 the Court of Claims found that at the time of the loss the appellee was a captain in the First Cavalry, United States Army, a mounted officer, on duty at the Presidio, and that he had there a horse which was lost in the military service under the following circumstances: "The Government furnished as the forage ration barley with the awns on it and the horse died of strangulation of the intestines from eating such forage at said place. The loss was without fault or negligence on the part of the plaintiff."

It was further found that the claim was filed in the office of the Auditor for the War Department on November 26, 1910, and was disallowed on July 19, 1911, on the ground that "as the death of officer's horse was not caused by any exigency of the service, nor from a cause incident to or produced by the mili-

tary service, but was the result of a disease to which all horses are subject, no reimbursement can be made under the act of March 3, 1885."

There were also findings to the effect that the Secretary of War had decided that the horse in question was reasonable, useful, necessary, and proper for the plaintiff to have had in his possession while in quarters, engaged in the public service, in line of duty. The court also found that the value of the horse was $200 and rendered judgment for that amount.

In No. 915 the court found that the articles in question were lost or destroyed while the appellee, a first lieutenant, was stationed at Texas City, Tex., on duty with his regiment under the following circumstances:

> The camp was on low ground peculiarly exposed to inundation. August 16, 1915, a hurricane of exceptional violence and duration broke out on the coast of Texas, lasting through that day and the 17th and the 18th, driving the water from the bay up over the camp and totally wrecking and destroying all the tents as well as the wooden structures belonging to the Government. During said hurricane the plaintiff exerted himself to the utmost of his ability to save Government property, to save the lives of other officers and of their families, and to secure his own property from destruction. Notwithstanding all these efforts his tent and shack were swept away and all his personal property therein was destroyed or swept away by the waters. The loss was

without fault or negligence on the part of plaintiff.

The court further found that within two years of the occurrence of the loss appellee presented his claim; that the Secretary of War certified that the articles for which judgment had been rendered were reasonable, useful, necessary, and proper for appellee to have while in quarters engaged in the public service, in the line of duty, and that the prices which have since been allowed by the Court of Claims were reasonable.

It does not appear that any accounting officer of the Treasury has ever examined into and ascertained the value of this property. The court, however, has found that the valuation placed on it by the Secretary of War was fair and reasonable.

It is further found by the court that the auditor for the War Department disallowed the claim and that this disallowance was affirmed by the Comptroller, but there is no finding as to the reasons for the disallowance.

CONTENTIONS OF THE GOVERNMENT.

The Government contends—

First. That the act of 1885, which gives the right to compensation for property of this kind under certain circumstances, gives at the same time a remedy by providing a special tribunal and expressly declaring that the judgment of this tribunal shall be final and conclusive, and hence the Court of Claims has no jurisdiction.

Second. That the special acts applying to the loss of horses which were heretofore in force have no application to the case made in No. 708.

ASSIGNMENTS OF ERROR.

The judgments of the Court of Claims are erroneous because—

1. The court had no jurisdiction of the claim involved in either case.

(*a*) If it had jurisdiction, the facts found do not under the law warrant the judgments rendered.

BRIEF.

The Court of Claims filed no opinion in either of these cases, but based the judgments upon its opinions in the cases of Newcomber (51 C. Cls., 408) and Andrews (52 C. Cls., 373), in which the reasons for its conclusions are fully set out.

Treating both cases as arising under the act of 1885, it follows, as was said by the Court of Claims in *Newcomber* v. *United States, supra,* that "any rights which a claimant is entitled to under the act of 1885 must be found within the four corners of that act."

In other words, the United States has neither agreed to be responsible for nor consented to be sued for such claims, except as that consent was given by the passage of the act of 1885. That act, it is respectfully submitted, not only did not give consent on the part of the Government to have claims of this kind established by suits in the courts,

but expressly withheld that consent and instead enacted that the Government should pay only such amounts as should be ascertained by a special tribunal or agency created for that purpose.

The act first authorizes and directs the proper accounting officers of the Treasury "to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service" which has been lost or destroyed under certain specified circumstances. It is then provided that "the amount of such loss so ascertained and determined shall be paid * * * and shall be in full for all such loss or damage," provided, among other things, that the liability of the Government shall be limited "to such articles of personal property as the Secretary of War in his discretion shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty."

It will be observed that a liability against the Government to pay for the reasonable value of property lost is not declared in general terms. It is simply provided that the Government shall be liable for and pay such claims as shall be established in the manner provided by the act. The plain meaning of the statute is that the Government shall in no event pay any value except such as shall be ascertained by the proper accounting officers of the Treasury. It is equally clear that it shall pay for the loss of no articles of property except such

as the Secretary of War shall certify are reasonably necessary for the use of the officer. It is not required that the accounting officers shall ascertain the value of all property lost by Army officers, but only that he shall examine such property when it has been lost under the circumstances specified in the statute. Before he is authorized to make such a valuation he must find that the loss occurred under these circumstances. The question, therefore, of determining both the value of the property and whether it was lost under circumstances requiring the Government to pay for it are definitely committed to him. Indeed, this is the view taken of the statute by the Court of Claims, for it said in *Newcomber* v. *United States, supra*, at page 420:

> In the action contemplated by the act of 1885 the accounting officers are charged with the duty of ascertaining the value of the articles of personal property lost or destroyed and with determining whether the loss or destruction occurred under one or more of "the circumstances" stated in the act, and in a proper case to ascertain the amount which the Treasury may pay. Their action, to say the least, involves the exercise of judgment and is not merely administrative.

If there was nothing in the act except what has just been quoted, it would therefore be clear that the United States has not by this act opened its courts to claims for the purpose of ascertaining either the value of property lost, or whether it was lost under the circumstances mentioned in the act. But Con-

gress was not content to leave its purpose to that effect where there could be a shadow of doubt about it. The language quoted above to the effect that the amount of loss ascertained in the way provided should be paid and should be in full of all loss or damage, would seem to have been plain enough, but Congress went further, and by a proviso to the act declared:

> That any claim which shall be presented and acted on under authority of this act shall be held as finally determined.

Certainly this would seem to leave no doubt that the remedy given by this act through the tribunal created by it was intended to be the only remedy. But Congress still was not content, and added to the same proviso the words, "and shall never thereafter be reopened." And apparently determined that as the word, "reopened" might be construed so as to apply only to the right of the special tribunal to reverse itself, added the words "or considered."

It is scarcely possible to imagine any stronger language that could be used to make the action of the designated officers absolutely final and conclusive. Whether a claim exists and the amount of it are to be fixed in the way prescribed by the statute, and, in emphatic language, it is declared that action once taken by the special tribunal or agency shall never be reopened or again considered.

The Court of Claims recognizes that no action can be maintained in that court until the remedy provided by the act of 1885 has been resorted to. In the *Necomer* case, *supra*, at page 420, following the

language quoted above, it was said, speaking of the action of the accounting officers of the Treasury:

> But it is not necessarily final. If the facts are undisputed, and the law is not properly applied, or if they refuse to act on claims properly presented, or if payment of their award be refused, this court has jurisdiction to grant relief, because the right is founded upon a law of Congress.

And at pages 424 and 425 it is said, in effect, that judgment can be rendered by the Court of Claims for only such articles as have been certified by the Secretary of War, as required by the act.

The error of this holding is in treating the action of the special tribunal not as final, but merely as a prerequisite to the right to maintain a suit in court.

It has too long been settled to now admit of doubt that where power of jurisdiction is delegated to any public officer or tribunal over a subject matter and its exercise is confided to his or their judgment or discretion, the acts so done are binding and valid as to the subject matter. In other words, Congress, in granting rights to individuals against the Government, is under no obligation to provide a remedy through the courts. It may, if it sees fit, and as it has done in these cases, provide a remedy which shall consist merely of designating a special officer or agency to adjudicate the claim. (*United States* v. *Arredondo*, 6 Pet. 691; *Decatur* v. *Spaulding*, 14 Pet. 497; *United States* v. *California and Oregon Land Company*, 148 U. S. 31; *Pollard* v. *Bailey*, 20

Wall. 520; *Medbury* v. *United States*, 173 U. S. 492; *McLean* v. *United States*, 226 U. S. 374, and numerous other cases.)

The effort has been made to construe the two cases last mentioned as authority for the jurisdiction of the Court of Claims in these cases, and it may safely be assumed that unless something can be found in them to authorize it, the court is without jurisdiction.

In the *Medbury* case, *supra*, it was held that the Court of Claims had jurisdiction, but it was said:

> We do not mean by this decision to overrule or to throw doubt upon the general principle that where a special right is given by statute, and in that statute a special remedy for its violation is provided, that in such case the statutory remedy is the only one, but we hold that such principle has no application to this particular statute, because the statute does not, in our judgment, within the meaning of the principle mentioned, furnish a remedy for a refusal to grant the right given by the statute. (P. 498.)

The statute then under consideration merely provided that when certain facts existed, it should be the duty of the Secretary of the Interior to draw his warrant on the Treasury. The court said that the right which the act gave was the right "to have the Secretary in a proper case issue his warrant in payment of the claim, and until he refused to do so, no wrong is done and no case for a remedy is presented." (P. 497.)

In other words, that act did not provide that upon certain facts being found by the Secretary to exist, a right should accrue, but that there should be a right to have him issue his warrant whenever a certain state of facts actually existed. The *McLean* case, *supra*, is in principle the same. In the present cases, however, the act is entirely different. It establishes a tribunal consisting of the proper accounting officer and the Secretary of War, and creates a liability to pay only what this tribunal determines is due.

Congress could, of course, have provided for an appeal from the action of the special tribunal, or it might have simply made action by it a prerequisite to a suit in court, but, as has been seen, instead of doing this, it has repeatedly and in unmistakable language declared that the action taken should be final and should never be either reopened or again considered.

It is respectfully submitted, therefore, that the Court of Claims has no jurisdiction of any case arising under the act of 1885. Indeed, no court has any jurisdiction in such cases, unless, perhaps, if the officers designated by the act arbitrarily refused to act and either allow or disallow the claim, an appropriate suit to require their action might be maintained, but if so, whatever action they should then take would be final.

In the present cases it is clear that the court did not have jurisdiction even if the action of the special tribunal could be treated merely as a prerequisite to a suit in court. It must be conceded that in no

event is the question of the value of the property open to determination by the court, or any other agency, excepting the proper accounting officers of the Treasury.

In No. 708 these officers have never fixed the value of the horse in question. The judgment rendered was based upon an independent finding by the court that the value was $200. This is a matter that in any possible view the court had no jurisdiction of, and hence the judgment must be reversed.

The same is true in No. 915. In that case the Secretary of War certified to the value of the articles lost, and the Court of Claims found that the value so certified was reasonable, but it does not appear that the proper accounting officers of the Treasury ever examined into the question of values. The determination of this question has not been committed either to the Secretary of War or to the Court of Claims.

THE MERITS.

If the Court of Claims had jurisdiction to determine whether the circumstances under which the property involved in these judgments was lost bring the cases within the terms of the act of 1885, the judgments of the court are erroneous and the action of the accounting officers of the Treasury is correct. The substance of the act of 1885 is that where property is lost or destroyed in the military service, without fault or negligence on the part of the claimant, it shall be paid for when it was destroyed on

board an unseaworthy vessel, or where it appears that the loss or destruction of the private property was in consequence of the claimant having given his attention to the saving of the property belonging to the United States which was in danger at the same time. It was manifestly not intended to pay for wearing apparel that should be worn out, or a horse that should die from natural causes, or for property lost or destroyed through some accident or mishap which is not peculiar to military service, but may occur anywhere. Therefore Congress specified, as above, the circumstances incident to military service which would warrant the payment.

In No. 708 the horse died from eating oats and barley that had not been properly handled, a thing that was just as liable to occur in civil life as in the military service, and certainly the loss is not under any circumstances specified by the act.

In No. 915 the loss resulted from a storm and flood, which was no more peculiar to military service than to civilian life in the same section of the country. Moreover, it destroyed alike property of the United States and of the appellee, and while it is found that appellee did all that he could to prevent the loss of both, it is not found, as required by the statute, that the loss of his own property was due to his neglecting it in order to save the property of the Government.

SPECIAL STATUTES RELATING TO THE LOSS OF HORSES.

If appellee in No. 708 can not recover under the act of 1885, but little need be said as to his right to

recover under the special statutes relating to the loss of horses, which have been quoted above.

Section 3482 is copied from section 1 of the act of 1849. Unlike the act of 1885, at least its main purpose was to provide for loss in time of war. Indeed, that was probably its only purpose. In any event, it is not possible to bring the present case within its terms, except by referring to the provision that the loss shall be paid for when the death of the horse results "in consequence of the United States failing to supply sufficient forage." In this case it is at least doubtful whether in times of peace the Government is under any obligation to supply forage and hence this provision was manifestly intended to apply only to war times. Moreover, there is no claim that the Government did not furnish an abundance of forage. On the contrary, the claim is that the death resulted, not from insufficiency of forage, but from the fact that it was not as wholesome as it should have been. But this act of 1849, or section 3482 R. S., was amended by the act of June 22, 1874, which, confirming the idea that the original statute was meant to refer only to claims which had arisen in times of war, enacted that no claim should be presented or considered, unless presented prior to the first day of January, 1876.

Congress obviously understood that after that date there could be no payments made under that act, for, by the act of January 9, 1883, it extended the time for filing claims "for horses and equipments lost by officers and enlisted men in the military service of

the United States, which expired by limitation on the thirty-first day of December, eighteen hundred and seventy-five," for a period of one year from the passage of the act, and provided that all claims not filed within that time should be forever barred. And again by the act of August 13, 1888, it was provided "that the limitation heretofore imposed by law on the presentation by officers or soldiers of claims for the loss of horses and equipments in the military service during the late war is hereby suspended for the period of three years."

It follows, then, that long before this claim arose the section of the Revised Statutes referred to had ceased to furnish a remedy.

In conclusion it is respectfully submitted that the judgments in both of these cases are erroneous and should be reversed.

WILLIAM L. FRIERSON,
Assistant Attorney General.

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Supreme Court of the United States.

October Term, 1918.

THE UNITED STATES,
Appellant,
v.
CONRAD S. BABCOCK. } No. 708.

MOTION TO AFFIRM OR PLACE ON SUMMARY DOCKET.

Now comes the appellee, Conrad S. Babcock, by his attorneys and moves the court that the judgment in this cause be affirmed on the ground that the questions on which the decision of the cause depends are so frivolous as not to need further argument; or else that the cause be placed on the summary docket.

GEORGE A. KING,
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WILLIAM E. HARVEY,
Attorneys for Appellant.

BRIEF IN SUPPORT OF MOTION TO AFFIRM.

I. STATEMENT OF THE CASE.

FINDINGS AND JUDGMENT.

This is the claim of an officer of the United States Army for the value of a horse lost in the military service in July, 1910.

The Court of Claims found the loss of the horse as follows (rec. p. 4, Finding III):

"The Government furnished as the forage ration barley with the awns on it and the horse died of strangulation of the intestines from eating such forage at said place. The loss was without fault or negligence on the part of the plaintiff."

The word "awns" used in this finding is defined in the Century Dictionary as "a bristle-shaped terminal or dorsal appendage, such as the beard of wheat, barley and many grasses."

The Secretary of War has decided that the horse in question was reasonable, useful, necessary and proper for the officer to have had in his possession while engaged in the public service in the line of duty.

The court found the horse to be worth $200, and gave judgment in favor of the claimant for that amount (Finding VI, rec. p. 4; judgment, p. 5). From this judgment the United States appealed April 23, 1918, which appeal was allowed by the court October 21, 1918 (rec. p. 5).

STATUTES.

Revised Statutes of the United States, Sec. 3482:

"Any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalryman, engaged in the military service of the United States, who sustains damage without any fault or negligence on his part, while in the service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, which dies of the wound, or which, being so wounded, is abandoned by order of his officer and lost, or who sustains damage by the loss of any horse by death or abandonment because of the unavoidable dangers of the sea when on board a United States transport vessel, or because

the United States fails to supply transportation for the horse, and the owner is compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider is dismounted and separated from his horse and ordered to do duty on foot at a station detached from his horse or when the officer in the immediate command orders the horse turned out to graze in the woods, prairies, or commons, because the United States fails to supply sufficient forage, and the loss is consequent thereon, or for the loss of necessary equipage, in consequence of the loss of his horse, shall be allowed and paid the value thereof, not to exceed $200." * * *

Act of June 22, 1874 (18 Stat. 193):

"An Act to Amend an act entitled 'An Act to provide for the payment of horses and other property lost or destroyed in the military service of the United States,' approved March 3, 1849.

"*Be it enacted*, etc., That the first section of the act of March 3, 1849, providing for the payment for horses and equipments lost by officers or enlisted men in the military service shall not be construed to deny payment to such officers or enlisted men for horses which may have been purchased by them in States in insurrection; and payment in any case shall not be refused where the loss resulted from any exigency or necessity of the military service, unless it was caused by the fault or negligence of such officers or enlisted men.

"Sec. 2. That no claims under said section or this amendment thereto shall be considered unless presented prior to the first day of January, 1876."

Act of March 3, 1885 (23 Stat. 350):

"An act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States.

"*Be it enacted*, etc., That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which have been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the claimant.

"Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

"Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: *Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered: *And provided further*, That this act shall not apply to losses sustained in time of war or hostilities with Indians: *And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion shall decide to be reasonable, useful, necessary and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty: *And provided further*, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction."

II. BRIEF OF ARGUMENT.

The allowance of this claim in the court below was urged in the alternative, either under Revised Statutes, Section 3482, and its supplementary enactment of June 22, 1874; or under the act of March 3, 1885.

We will briefly submit alternative grounds of recovery under one or the other of these acts.

I. REV. STAT. SEC. 3482, AND ACT OF 1874.

Section 3482 of the Revised Statutes is a reenactment of the first section of an act approved March 3, 1849 (9 Stat. 414).

The loss of this horse is within the literal terms of Revised Statutes, sec. 3482, because the loss "was in consequence of the United States failing to supply sufficient forage." Forage of a character so injurious as to cause a fatal intestinal disease was certainly not "sufficient" in the sense of being proper or healthful food for animals. The language of the statute means sufficient good forage. The supplying of bad forage is just as much within this statute as not supplying forage at all. It can not be said that the horse had sufficient forage, when all the forage that was supplied was unfit for consumption. Grain unfit for food is not forage; it is poison.

See definition of "sufficient" in many adjudicated cases cited in "Words and Phrases," one of which is as follows:

"'Sufficient,' as defined by Webster, means adequate to suffice; equal to the end proposed; competent. *Pensacola & A. Ry. Co.* v. *State*, 5 South. 833, 835; 25 Fla. 310; 3 L. R. A. 661."

Still more clearly is this claim valid under the

amendatory act of 1874. That act was thus construed by the Court of Claims not long after its enactment, *Thomas* v. *United States* (16 C. Cls. 522, 525):

"In our opinion the meaning of this section is to give the act of 1874 the effect of amending section 3482 of the Revised Statutes, so as practically to do away with the specifications therein contained of cases in which compensation for the loss of a horse by an enlisted man may be allowed and paid, and to authorize such allowance and payment 'in *any* case where the loss resulted from *any* exigency or necessity of the military service.'"

It will hardly be denied that this case is within Revised Statutes, Sec. 3482, or its amendment of 1874.

It may, however, be contended that it is barred by the second section of the act of 1874, as not having been presented prior to the 1st day of January, 1876.

The section in question was considered by the Court of Claims in 1904, together with a separate statute of limitations enacted January 9, 1883 (22 Stat. 401). These acts were held to operate merely as statutes of limitation concerning claims in existence at the date of their passage; not as acts repealing the long-standing policy to pay for horses lost in the military service, beginning in 1796. *Hardie* v. *United States*, 39 C. Cls. 250, reaffirmed in *Cox* v. *United States*, 41 C. Cls. 86.

In the *Cox* case the horse was lost in 1898, in the *Hardie* case in 1900. The Court of Claims awarded judgments, holding that the claims were within Revised Statutes, Sec. 3482, and its amendment of June 22, 1874, and were not barred either by the second section of that act or by the limitation placed upon the presentation of claims by the act of January 9, 1883 (22 Stat. 401).

The decisions in the *Hardie* and *Cox* cases consti-

tuted the law of the Court of Claims in this class of cases for a period of twelve years. Judgments without opinions were rendered by the Court of Claims in a large number of cases extending from 1903 to 1915. These are reported in the Court of Claims reports as follows:

Francis Hunter Hardie, 38 C. Cls. 754; *George Van Horn Moseley*, 40 C. Cls. 531; *Frank W. Gruetzmacher*, 40 C. Cls. 538; *John L. Sellers, Charles B. Ewing, Charles A. Tayman, Charles E. Woodruff, William H. Bisbee*, 40 C. Cls. 548 (there erroneously listed as claims for "extra pay" but shown to be "horse lost in the military service" by official reports of "Judgments Rendered by the Court of Claims," House Document 307, 59th Congress, 1st Session, p. 2); *Gordon Johnston*, 41 C. Cls. 513; *John King Freeman, Frederick S. Young*, 41 C. Cls. 519; *Lewis S. Ryan*, 41 C. Cls. 524 (correct nature of claim shown in House Doc. 307, 59th Cong. 1st Sess. p. 2); *George K. Hunter*, 41 C. Cls. 530 (correct nature of claim shown House Doc. 859, 59th Cong. 1st Sess. p. 2); *Palmer E. Pierce*, 41 C. Cls. 531 (correct nature of claim shown House Doc. No. 859, 59th Cong. 1st Sess. p. 2); *William S. Valentine*, 41 C. Cls. 532 (correct nature of claim shown House Doc. 859, 59th Cong. 1st Sess. p. 3); *Benjamin B. Hyer, James H. McRae, Winfield S. Edgerly, Frank R. Lang, Robert E. L. Spence, William R. Molinard, Alonzo B. Coit, Frank E. Lyman, Jr., Harry H. Pattison, Carl L. Mueller, George T. Langhorne, Henry Carroll*, 41 C. Cls. 538, 539, 540 (correct nature of claims shown Senate Doc. 511, 59th Cong. 1st Sess. p. 5); *Edwin L. Martindale*, 41 C. Cls. 544 (correct nature shown House Doc. 656, 59th Cong. 2d Sess. p. 8); *Frank R. McCoy, Hugh L. Scott*, 41 C. Cls. 543 (correct nature shown

House Doc. 656, 59th Cong. 2d Sess. p. 8); *William D. Beach*, 42 C. Cls. 539; *Thomas P. Williams, Edmund L. Butts, Benjamin W. Atkinson, Henry L. Ripley, David M. Dodge, George F. Buss, George C. Geer, Harry W. Krumm, Tyree R. Rivers*, 42 C. Cls. 555 (correct nature of claims stated Senate Doc. 369, 59th Cong. 2d Sess. p. 6); *George H. Priest*, 42 C. Cls. 557 (Senate Doc. 369, 59th Cong. 2d Sess. p. 8, shows correct nature of claim); *Herbert H. Sargent*, 42 C. Cls. 563 (correct nature of claim shown House Doc. 345, 60th Cong. 1st Sess. p. 2); *William T. Littebrant*, 43 C. Cls. 601 (correct nature of claim shown Senate Doc. 498, 60th Cong. 1st Sess. p. 2); *George H. Morgan*, 44 C. Cls. 615 (correct nature of claim shown House Doc. 437, 61st Cong. 2d Sess. p. 2); *William W. West, Jr.* 47 C. Cls. 661; *James E. Abbott*, 48 C. Cls. 520; *Samuel W. Fountain, Robert S. Woodson*, 49 C. Cls. 697; *Milton G. Holliday*, 49 C. Cls. 701; *Alfred C. Markley*, 49 C. Cls. 710; *Alexander H. Davidson*, 49 C. Cls. 714; *James W. Clendenin, Mathias Crowley, Walter S. Duggan, William R. Eastman, William M. Wright*, 50 C. Cls. 410; *Charles D. McMurdo*, 50 C. Cls. 412; *William R. Pope, Robert R. Love*, 50 C. Cls. 413; *Philip F. Harvey*, 50 C. Cls. 418. (The subject matter of some of the above claims is erroneously stated in the Court of Claims Reports, but in all such cases the description is corrected by a reference to the official report of the Secretary of the Treasury to Congress for appropriation, which description designates each of these cases as being for horse lost in the military service; the reference to the Congressional Document is given in each such case.)

As we have shown, this view as to the continued existence and force of Revised Statutes, Sec. 3482, and its amendment of 1874 was adopted by the Court

of Claims in 1904, reaffirmed in 1906, and applied up to 1915, judgments being given in sixty cases. Such a long continued judicial construction should be conclusive, especially when it is considered that every one of the judgments rendered was appealable to this court. Revised Statutes, Sec. 707, reenacted Judicial Code, Sec. 242, provides that all judgments against the United States irrespective of the amount may be carried by the United States on appeal to this court. (*United States* v. *Gleeson*, 124 U. S. 255; *Reid* v. *United States*, 211 U. S. 529; *Fritch Co.* v. *United States*, present term not yet reported.) Such a long acquiescence by the government in a ruling as to the continued force of Revised Statutes, Sec. 3482, and the act of 1874 is conclusive.

As late as 1914 the Court of Claims held that horses lost by officers in the military service were not covered by the act of March 3, 1885, governing payment for property lost in the military service of the United States for the very reason that they were within the provisions of Revised Statutes, Sec. 3482, and its amendment of 1874 providing payment for horses and equipment lost by officers in the service of the United States, *Sibley* v. *United States*, 49 C. Cls. 242, 249, 250.

Change of Ruling.

In 1916 and 1917 a series of cases involving losses of horses by Army officers in the service of the United States came before the Court of Claims and are all reported in Vol. 52 of the reports of that court.

These are *Griffis* v. *United States*, 52 C. Cls. 1; same case on motion for new trial at p. 170; and *Andrews* v. *United States*, p. 373, with which are reported others, including this one of *Babcock* at p. 385.

Each one of these opinions is by a different judge. The ruling of each opinion may be summarized as follows:

Griffis, 52 C. Cls. 1: *Holds* that Revised Statutes, Sec. 3482 and its amendment of 1874 are repealed by the expiration of the limitation of time contained in legislation of 1874, 1883 and 1888, there considered. Previous decisions of the court in the *Hardie* and *Cox* cases (39 C. Cls. 250 and 41 C. Cls. 86) are specifically considered and overruled. All the judgments rendered during the previous twelve years on the strength of these cases are held to be erroneous.

Griffis, 52 C. Cls. 170: *Holds* that while the limitation contained in the acts of 1874, 1883 and 1888 repealed the amendatory act of 1874, "section 3482 of the Revised Statutes continued in force unaffected by the act of 1874." It was also specifically decided that the act of 1885 (quoted at the opening of this brief, *ante*, pp. 3, 4) "did not apply to claims for losses of horses" (52 C. Cls. one-third down p. 198, referring to *Sibley's* case, 49 C. Cls. 242).

Andrews, 52 C. Cls. 373: *Holds*, that the act of March 3, 1885 (quoted, *ante*, pp. 3, 4,), is the law now governing claims for the losses of horses in the service and that the present claimant, Conrad S. Babcock, is entitled to recover thereunder (52 C. Cls. 385, 386).

II. ACT OF MARCH 3, 1885.

We have been insisting that this claim is allowable under Section 3482 of the Revised Statutes, which would amply justify recovery with or without the amendatory act of 1874. If, however, those acts are not in force or are not regarded as applying to this class of cases then this case is clearly within the lost

property act of 1885 (*ante*, pp. 3, 4). That act clearly includes a horse as an article of property which an officer is required to have in the military service.

The court (*Andrews* v. *United States*, 52 C. Cls. 380) states the reasons for so holding in an eminently satisfactory manner:

"The language employed in the first paragraph of the act of 1885 is decidedly comprehensive. From it alone it is not difficult to perceive a legislative intent to reimburse officers and enlisted men in the military service for the loss of *private property* lost or destroyed, under the circumstances mentioned, in said service. Obviously, it was designed to cover in toto the private property carried by the persons enumerated into the military service which was indispensable to the peculiar conditions of that particular governmental service; in other words, 'reasonable, useful, necessary, and proper for such officer or soldier while in quarters.' If we are to exclude privately owned horses from the term 'private property,' a reason must be found outside the express language of the act, for it can not be discovered within its terms if we give to the words used their ordinary, usual, and well-known significance."

The earlier decision in *Sibley* v. *United States*, 49 C. Cls. 242, refused allowance under this act only on the ground that the loss of horses was otherwise provided for by Sec. 3482 of the Revised Statutes and the amendment of 1874, *ante*, pp. 2, 3. If those acts did not apply to horses in time of peace, as held by the Court of Claims, then no possible reason exists for excluding horses from the purview of the act of 1885. The act of 1885, *ante*, pp. 3, 4, limits the liability of the government to such articles of personal property as the Secretary of War in his discretion shall decide to be "reasonable, useful, necessary and proper" for the officer under the circumstances. The Secretary has made such a de-

cision in this case (Finding V, Rec. p. 4), although it may be unnecessary in a proceeding in the Court of Claims or anywhere in relation to a horse which every cavalry officer is required by Army Regulations to keep (Army Regulations, 1913, paragraph 1272).

The direction of the act of 1885 "That the proper accounting officers of the Treasury" shall settle the claims does not divest the Court of Claims of jurisdiction (*Medbury* v. *United States*, 173 U. S. 492; *McLean* v. *United States*, 226 U. S. 374, 378).

STARE DECISIS.

The case before the court involves the rule of *stare decisis*. The construction given in two well considered decisions and followed in sixty cases for a period of twelve years should not be set aside and an entirely new construction adopted.

This is not a case of continued importance as a matter of administration. Congress by new legislation, enacted as a part of the Army appropriation act of July 9, 1918, Chapter VI, 40 Stat. 880, 881, has made new and different provisions for the future, retroactive to the beginning of the present war, and indefinitely prospective in regard to the loss of private property. It provides that the act of March 3, 1885 (quoted, *ante*, pp. 3, 4), shall be amended to read as follows:

"Sec. 1. That private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulations to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the 5th day of April, 1917, has been or shall hereafter be lost, damaged, or destroyed in the military

service shall be replaced, or the damage thereto or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur in any of the following circumstances:"

Here follow detailed provisions as to circumstances of loss, time and manner of presenting claims, etc.

New and different provisions are thus made for the future. Distinct provision is made to reimburse officers for "horses and equipment required by law or regulations to be provided by mounted officers." The statutes which up to 1916 were construed by the Court of Claims as providing for the loss of horses in the military service of the United States should not receive a different construction as to the few cases remaining before the taking effect of the new legislation of 1918.

The judgment, whether regarded as under Revised Statutes, Sec. 3482, and its amendment of 1874, or under the act of March 3, 1885, was correct and should be affirmed.

GEORGE A. KING,
WILLIAM B. KING,
WILLIAM E. HARVEY,
Attorneys for Appellee.

Supreme Court of the United States.

October Term, 1918.

THE UNITED STATES, *Appellant,* v. CONRAD S. BABCOCK. } No. 708.

TABLE OF CASES CITED.

BRIEF FOR APPELLEE.

I. STATEMENT OF THE CASE.

FINDINGS AND JUDGMENT.

This is the claim of an officer of the United States Army for the value of a horse lost in the military service in July, 1910.

The Court of Claims found the loss of the horse as follows (rec. p. 4, Finding III):

"The Government furnished as the forage ration barley with the awns on it and the horse died of strangulation of the intestines from eating such forage at said place. The loss was without fault or negligence on the part of the plaintiff."

The word "awns" used in this finding is defined in the Century Dictionary as "a bristle-shaped terminal or dorsal appendage, such as the beard of wheat, barley and many grasses."

The Secretary of War has decided that the horse in question was reasonable, useful, necessary and proper for the officer to have had in his possession while engaged in the public service in the line of duty.

The court found the horse to be worth $200, and gave judgment in favor of the claimant for that amount (Finding VI, rec. p. 4; judgment, p. 5). From this judgment the United States appealed April 23, 1918, which appeal was allowed by the court October 21, 1918 (rec. p. 5).

STATUTES.

Revised Statutes of the United States, Sec. 3482:

"Any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalryman, engaged in the military service of the United States, who sustains damage without any fault or negligence on his part, while in the service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, which dies of the wound, or which, being so wounded, is abandoned by order of his officer and lost, or who sustains damage by the loss of any horse by death or abandonment because of the unavoidable dangers of the sea when on board a United States transport vessel, or because

the United States fails to supply transportation for the horse, and the owner is compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider is dismounted and separated from his horse and ordered to do duty on foot at a station detached from his horse or when the officer in the immediate command orders the horse turned out to graze in the woods, prairies, or commons, because the United States fails to supply sufficient forage, and the loss is consequent thereon, or for the loss of necessary equipage, in consequence of the loss of his horse, shall be allowed and paid the value thereof, not to exceed $200." * * *

Act of June 22, 1874 (18 Stat. 193):

"An Act to Amend an act entitled 'An Act to provide for the payment of horses and other property lost or destroyed in the military service of the United States,' approved March 3, 1849.

"*Be it enacted*, etc., That the first section of the act of March 3, 1849, providing for the payment for horses and equipments lost by officers or enlisted men in the military service shall not be construed to deny payment to such officers or enlisted men for horses which may have been purchased by them in States in insurrection; and payment in any case shall not be refused where the loss resulted from any exigency or necessity of the military service, unless it was caused by the fault or negligence of such officers or enlisted men.

"Sec. 2. That no claims under said section or this amendment thereto shall be considered unless presented prior to the first day of January, 1876."

Act of March 3, 1885 (23 Stat. 350):

"An act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States.

"*Be it enacted*, etc., That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which have been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the claimant.

"Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

"Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: *Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered: *And provided further*, That this act shall not apply to losses sustained in time of war or hostilities with Indians: *And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion shall decide to be reasonable, useful, necessary and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty: *And provided further*, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction."

II. BRIEF OF ARGUMENT.

The allowance of this claim in the court below was urged in the alternative, either under Revised Statutes, Section 3482, and its supplementary enactment of June 22, 1874; or under the act of March 3, 1885.

We will briefly submit alternative grounds of recovery under one or the other of these acts.

I. REV. STAT. SEC. 3482, AND ACT OF 1874.

Section 3482 of the Revised Statutes is a reenactment of the first section of an act approved March 3, 1849 (9 Stat. 414).

The loss of this horse is within the literal terms of Revised Statutes, sec. 3482, because the loss "was in consequence of the United States failing to supply sufficient forage." Forage of a character so injurious as to cause a fatal intestinal disease was certainly not "sufficient" in the sense of being proper or healthful food for animals. The language of the statute means sufficient good forage. The supplying of bad forage is just as much within this statute as not supplying forage at all. It can not be said that the horse had sufficient forage, when all the forage that was supplied was unfit for consumption. Grain unfit for food is not forage; it is poison.

See definition of "sufficient" in many adjudicated cases cited in "Words and Phrases," one of which is as follows:

"'Sufficient,' as defined by Webster, means adequate to suffice; equal to the end proposed; competent. *Pensacola & A. Ry. Co.* v. *State*, 5 South. 833, 835; 25 Fla. 310; 3 L. R. A. 661."

Still more clearly is this claim valid under the

amendatory act of 1874. That act was thus construed by the Court of Claims not long after its enactment, *Thomas* v. *United States* (16 C. Cls. 522, 525):

"In our opinion the meaning of this section is to give the act of 1874 the effect of amending section 3482 of the Revised Statutes, so as practically to do away with the specifications therein contained of cases in which compensation for the loss of a horse by an enlisted man may be allowed and paid, and to authorize such allowance and payment 'in *any* case where the loss resulted from *any* exigency or necessity of the military service.'"

It will hardly be denied that this case is within Revised Statutes, Sec. 3482, or its amendment of 1874.

It may, however, be contended that it is barred by the second section of the act of 1874, as not having been presented prior to the 1st day of January, 1876.

The section in question was considered by the Court of Claims in 1904, together with a separate statute of limitations enacted January 9, 1883 (22 Stat. 401). These acts were held to operate merely as statutes of limitation concerning claims in existence at the date of their passage; not as acts repealing the long-standing policy to pay for horses lost in the military service, beginning in 1796. *Hardie* v. *United States*, 39 C. Cls. 250, reaffirmed in *Cox* v. *United States*, 41 C. Cls. 86.

In the *Cox* case the horse was lost in 1898, in the *Hardie* case in 1900. The Court of Claims awarded judgments, holding that the claims were within Revised Statutes, Sec. 3482, and its amendment of June 22, 1874, and were not barred either by the second section of that act or by the limitation placed upon the presentation of claims by the act of January 9, 1883 (22 Stat. 401).

The decisions in the *Hardie* and *Cox* cases consti-

tuted the law of the Court of Claims in this class of cases for a period of twelve years. Judgments without opinions were rendered by the Court of Claims in a large number of cases extending from 1903 to 1915. These are reported in the Court of Claims reports as follows:

Francis Hunter Hardie, 38 C. Cls. 754; *George Van Horn Moseley*, 40 C. Cls. 531; *Frank W. Gruetzmacher*, 40 C. Cls. 538; *John L. Sellers, Charles B. Ewing, Charles A. Tayman, Charles E. Woodruff, William H. Bisbee*, 40 C. Cls. 548 (there erroneously listed as claims for "extra pay" but shown to be "horse lost in the military service" by official reports of "Judgments Rendered by the Court of Claims," House Document 307, 59th Congress, 1st Session, p. 2); *Gordon Johnston*, 41 C. Cls. 513; *John King Freeman, Frederick S. Young*, 41 C. Cls. 519; *Lewis S. Ryan*, 41 C. Cls. 524 (correct nature of claim shown in House Doc. 307, 59th Cong. 1st Sess. p. 2); *George K. Hunter*, 41 C. Cls. 530 (correct nature of claim shown House Doc. 859, 59th Cong. 1st Sess. p. 2); *Palmer E. Pierce*, 41 C. Cls. 531 (correct nature of claim shown House Doc. No. 859, 59th Cong. 1st Sess. p. 2); *William S. Valentine*, 41 C. Cls. 532 (correct nature of claim shown House Doc. 859, 59th Cong. 1st Sess. p. 3); *Benjamin B. Hyer, James H. McRae, Winfield S. Edgerly, Frank R. Lang, Robert E. L. Spence, William R. Molinard, Alonzo B. Coit, Frank E. Lyman, Jr., Harry H. Pattison, Carl L. Mueller, George T. Langhorne, Henry Carroll*, 41 C. Cls. 538, 539, 540 (correct nature of claims shown Senate Doc. 511, 59th Cong. 1st Sess. p. 5); *Edwin L. Martindale*, 41 C. Cls. 544 (correct nature shown House Doc. 656, 59th Cong. 2d Sess. p. 8); *Frank R. McCoy, Hugh L. Scott*, 41 C. Cls. 543 (correct nature shown

House Doc. 656, 59th Cong. 2d Sess. p. 8); *William D. Beach*, 42 C. Cls. 539; *Thomas P. Williams, Edmund L. Butts, Benjamin W. Atkinson, Henry L. Ripley, David M. Dodge, George F. Buss, George C. Geer, Harry W. Krumm, Tyree R. Rivers*, 42 C. Cls. 555 (correct nature of claims stated Senate Doc. 369, 59th Cong. 2d Sess. p. 6); *George H. Priest*, 42 C. Cls. 557 (Senate Doc. 369, 59th Cong. 2d Sess. p. 8, shows correct nature of claim); *Herbert H. Sargent*, 42 C. Cls. 563 (correct nature of claim shown House Doc. 345, 60th Cong. 1st Sess. p. 2); *William T. Littebrant*, 43 C. Cls. 601 (correct nature of claim shown Senate Doc. 498, 60th Cong. 1st Sess. p. 2); *George H. Morgan*, 44 C. Cls. 615 (correct nature of claim shown House Doc. 437, 61st Cong. 2d Sess. p. 2); *William W. West, Jr.* 47 C. Cls. 661; *James E. Abbott*, 48 C. Cls. 520; *Samuel W. Fountain, Robert S. Woodson*, 49 C. Cls. 697; *Milton G. Holliday*, 49 C. Cls. 701; *Alfred C. Markley*, 49 C. Cls. 710; *Alexander H. Davidson*, 49 C. Cls. 714; *James W. Clendenin, Mathias Crowley, Walter S. Duggan, William R. Eastman, William M. Wright*, 50 C. Cls. 410; *Charles D. McMurdo*, 50 C. Cls. 412; *William R. Pope, Robert R. Love*, 50 C. Cls. 413; *Philip F. Harvey*, 50 C. Cls. 418. (The subject matter of some of the above claims is erroneously stated in the Court of Claims Reports, but in all such cases the description is corrected by a reference to the official report of the Secretary of the Treasury to Congress for appropriation, which description designates each of these cases as being for horse lost in the military service; the reference to the Congressional Document is given in each such case.)

As we have shown, this view as to the continued existence and force of Revised Statutes, Sec. 3482, and its amendment of 1874 was adopted by the Court

of Claims in 1904, reaffirmed in 1906, and applied up to 1915, judgments being given in sixty cases. Such a long continued judicial construction should be conclusive, especially when it is considered that every one of the judgments rendered was appealable to this court. Revised Statutes, Sec. 707, reenacted Judicial Code, Sec. 242, provides that all judgments against the United States irrespective of the amount may be carried by the United States on appeal to this court. (*United States* v. *Gleeson*, 124 U. S. 255; *Reid* v. *United States*, 211 U. S. 529; *Fritch Co.* v. *United States*, present term not yet reported.) Such a long acquiescence by the government in a ruling as to the continued force of Revised Statutes, Sec. 3482, and the act of 1874 is conclusive.

As late as 1914 the Court of Claims held that horses lost by officers in the military service were not covered by the act of March 3, 1885, governing payment for property lost in the military service of the United States for the very reason that they were within the provisions of Revised Statutes, Sec. 3482, and its amendment of 1874 providing payment for horses and equipment lost by officers in the service of the United States, *Sibley* v. *United States*, 49 C. Cls. 242, 249, 250.

Change of Ruling.

In 1916 and 1917 a series of cases involving losses of horses by Army officers in the service of the United States came before the Court of Claims and are all reported in Vol. 52 of the reports of that court.

These are *Griffis* v. *United States*, 52 C. Cls. 1; same case on motion for new trial at p. 170; and *Andrews* v. *United States*, p. 373, with which are reported others, including this one of *Babcock* at p. 385.

Each one of these opinions is by a different judge. The ruling of each opinion may be summarized as follows:

Griffis, 52 C. Cls. 1: *Holds* that Revised Statutes, Sec. 3482 and its amendment of 1874 are repealed by the expiration of the limitation of time contained in legislation of 1874, 1883 and 1888, there considered. Previous decisions of the court in the *Hardie* and *Cox* cases (39 C. Cls. 250 and 41 C. Cls. 86) are specifically considered and overruled. All the judgments rendered during the previous twelve years on the strength of these cases are held to be erroneous.

Griffis, 52 C. Cls. 170: *Holds* that while the limitation contained in the acts of 1874, 1883 and 1888 repealed the amendatory act of 1874, "section 3482 of the Revised Statutes continued in force unaffected by the act of 1874." It was also specifically decided that the act of 1885 (quoted at the opening of this brief, *ante*, pp. 3, 4) "did not apply to claims for losses of horses" (52 C. Cls. one-third down p. 198, referring to *Sibley's* case, 49 C. Cls. 242).

Andrews, 52 C. Cls. 373: *Holds*, that the act of March 3, 1885 (quoted, *ante*, pp. 3, 4,), is the law now governing claims for the losses of horses in the service and that the present claimant, Conrad S. Babcock, is entitled to recover thereunder (52 C. Cls. 385, 386).

II. ACT OF MARCH 3, 1885.

We have been insisting that this claim is allowable under Section 3482 of the Revised Statutes, which would amply justify recovery with or without the amendatory act of 1874. If, however, those acts are not in force or are not regarded as applying to this class of cases then this case is clearly within the lost

property act of 1885 (*ante*, pp. 3, 4). That act clearly includes a horse as an article of property which an officer is required to have in the military service.

The court (*Andrews* v. *United States*, 52 C. Cls. 380) states the reasons for so holding in an eminently satisfactory manner:

"The language employed in the first paragraph of the act of 1885 is decidedly comprehensive. From it alone it is not difficult to perceive a legislative intent to reimburse officers and enlisted men in the military service for the loss of *private property* lost or destroyed, under the circumstances mentioned, in said service. Obviously, it was designed to cover in toto the private property carried by the persons enumerated into the military service which was indispensable to the peculiar conditions of that particular governmental service; in other words, 'reasonable, useful, necessary, and proper for such officer or soldier while in quarters.' If we are to exclude privately owned horses from the term 'private property,' a reason must be found outside the express language of the act, for it can not be discovered within its terms if we give to the words used their ordinary, usual, and well-known significance."

The earlier decision in *Sibley* v. *United States*, 49 C. Cls. 242, refused allowance under this act only on the ground that the loss of horses was otherwise provided for by Sec. 3482 of the Revised Statutes and the amendment of 1874, *ante*, pp. 2, 3. If those acts did not apply to horses in time of peace, as held by the Court of Claims, then no possible reason exists for excluding horses from the purview of the act of 1885. The act of 1885, *ante*, pp. 3, 4, limits the liability of the government to such articles of personal property as the Secretary of War in his discretion shall decide to be "reasonable, useful, necessary and proper" for the officer under the circumstances. The Secretary has made such a de-

cision in this case (Finding V, Rec. p. 4), although it may be unnecessary in a proceeding in the Court of Claims or anywhere in relation to a horse which every cavalry officer is required by Army Regulations to keep (Army Regulations, 1913, paragraph 1272).

The direction of the act of 1885 "That the proper accounting officers of the Treasury" shall settle the claims does not divest the Court of Claims of jurisdiction (*Medbury* v. *United States*, 173 U. S. 492; *McLean* v. *United States*, 226 U. S. 374, 378).

STARE DECISIS.

The case before the court involves the rule of *stare decisis*. The construction given in two well considered decisions and followed in sixty cases for a period of twelve years should not be set aside and an entirely new construction adopted.

This is not a case of continued importance as a matter of administration. Congress by new legislation, enacted as a part of the Army appropriation act of July 9, 1918, Chapter VI, 40 Stat. 880, 881, has made new and different provisions for the future, retroactive to the beginning of the present war, and indefinitely prospective in regard to the loss of private property. It provides that the act of March 3, 1885 (quoted, *ante*, pp. 3, 4), shall be amended to read as follows:

"Sec. 1. That private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulations to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the 5th day of April, 1917, has been or shall hereafter be lost, damaged, or destroyed in the military

service shall be replaced, or the damage thereto or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur in any of the following circumstances:"

Here follow detailed provisions as to circumstances of loss, time and manner of presenting claims, etc.

New and different provisions are thus made for the future. Distinct provision is made to reimburse officers for "horses and equipment required by law or regulations to be provided by mounted officers." The statutes which up to 1916 were construed by the Court of Claims as providing for the loss of horses in the military service of the United States should not receive a different construction as to the few cases remaining before the taking effect of the new legislation of 1918.

The judgment, whether regarded as under Revised Statutes, Sec. 3482, and its amendment of 1874, or under the act of March 3, 1885, was correct and should be affirmed.

GEORGE A. KING,
WILLIAM B. KING,
WILLIAM E. HARVEY,
Attorneys for Appellee.

Supreme Court of the United States

October Term, 1918.

THE UNITED STATES,
Appellant,
v.
HERBERT B. HAYDEN.
No. 915.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

I. STATEMENT OF THE CASE.

The appellee, Herbert B. Hayden, an officer of the United States Army, filed a petition in the Court of Claims August 8, 1917, claiming reimbursement for a number of articles of personal property lost by him in a destructive hurricane and flood in August, 1915, at Texas City, Texas, where he was on duty with his regiment (Record, pp. 1–4).

The claim is based on the act of March 3, 1885, (23 Stat. 350) entitled "An Act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States." The full text of the act is contained in paragraph 4 of the petition (Record, pp. 3, 4).

Finding I (Record, p. 5) reads as follows:

"The plaintiff, Herbert B. Hayden, was at the time

covered by this claim a first lieutenant, Battery C, 4th Field Artillery, and was stationed at Texas City, Texas, on duty with his regiment.

"The camp was on low ground peculiarly exposed to inundation. August 16, 1915, a hurricane of exceptional violence and duration broke out on the coast of Texas, lasting through that day and the 17th and the 18th, driving the water from the bay up over the camp and totally wrecking and destroying all the tents as well as the wooden structures belonging to the Government. During said hurricane the plaintiff exerted himself to the utmost of his ability to save Government property, to save the lives of other officers and of their families, and to secure his own property from destruction. Notwithstanding all these efforts his tent and shack were swept away and all his personal property therein was destroyed or swept away by the waters. The loss was without fault or negligence on the part of plaintiff."

The claim was presented within two years of the loss or destruction as required by Par. 726, Army Regulations, 1913 (Finding II, first paragraph, Record, p. 5). For convenience this paragraph is here given from the Army Regulations of 1913:

"726. Compensation may be made under the provisions of the act of Congress approved March 3, 1885, for private property of officers or enlisted men lost or destroyed in the military service under any of the following circumstances:

"1. Without fault or negligence on the part of the claimant, and on account of some exigency or necessity of the military service.

"2. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment.

"3. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the sav-

ing of property belonging to the United States which was in danger at the same time and under similar circumstances.

"Compensation will not be made for losses sustained in time of war or hostilities with Indians, and claim for compensation must be presented within two years from the occurrence of the loss or destruction. Each claim for compensation will be forwarded, through military channels, to the Auditor for the War Department, and will, if possible, be accompanied by the proceedings of a board of officers showing fully the circumstances of the loss. All personal property for the loss or destruction of which payment is claimed must be enumerated and described in the proceedings of the board of officers, but the board will recommend payment for only such articles as in the opinion of the board were reasonable, useful, necessary and proper for the claimant to have in the public service in the line of duty."

The Secretary of War found on the report of a board that certain articles were reasonable, useful, necessary, proper, etc., and stated the value at $333, which the court found to be the fair value of the property (Finding II, Record, pp. 5, 6).

The Court of Claims, December 16, 1918, entered judgment in favor of the claimant for $333 (Record, p. 7).

The United States appealed to this court (Record, p. 7).

II. BRIEF OF ARGUMENT.

Construction of the Act of 1885.

The circumstances of this loss bring it clearly within both the letter and the spirit of the act of 1885. That act provides compensation for the loss of private property of officers and enlisted men "under the following circumstances:"

1. When without fault or negligence on the part of the claimant.

2. Where shipped on board an unseaworthy vessel by order of any officer authorized, etc.

3. Where the loss was in consequence of the claimant having given his attention to saving property belonging to the United States.

The Comptroller of the Treasury decided in 1896,

"That it is sufficient to bring a case within any one of the clauses to give claimant the right to recover under the above cited act." *Carson's* case, 2 Comp. Dec. 644, 646, reaffirming original construction of the act in 1885, Digest Second Comptroller's Decisions, Vol. 3, p. 200, §764, and disapproving decision of 1893 to the contrary.

This view was reaffirmed in a decision of the Comptroller in 1913 (20 Comp. Dec. 238).

True, this construction was later departed from in *Gallagher's* case, 23 Comp. Dec. 627, decided May 7, 1917, referred to at the end of paragraph 3 of the petition in this case.

The Comptroller there held that the first clause providing for reimbursement when the loss was without fault or negligence was not an independent ground for reimbursement but was a qualification of the second and third clauses; and that a claim must be brought within either the second clause, providing payment where the property was shipped on an unseaworthy vessel, or under the third clause where the loss of the private property was in consequence of the claimant giving his attention to saving property belonging to the United States, in danger at the same time and under similar circumstances. To support this construction the debate in the Senate preceding the passage of the act of 1885 is given (p. 634), stars

being conveniently inserted to cover omission of a portion of the debate which shows that all claims for loss in the military service without the officer's fault or negligence were understood to be included.

Following closely upon this reversal of construction, and as if to express disapproval thereof, Congress, by a provision of general legislation in the Army appropriation act of July 9, 1918 (Chapter VI, 40 Stat. 880), enacted a complete substitute for the act of 1885, providing that private property belonging to officers, enlisted men, etc., of the Army, which since the 5th day of April, 1917, has been or shall hereafter be lost, damaged or destroyed in the military service shall be paid for "when such loss, damage, or destruction has occurred or shall hereafter occur *in any* of the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the owner.

"Second. When such private property so lost or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment.

"Third. When it appears that such private property was so lost or destroyed in consequence of its owner having given his attention to the saving of property belonging to the United States which was in danger at the same time and in similar circumstances.

"Fourth. When during travel under orders the regulation allowance of baggage transferred by a common carrier is lost or damaged; but replacement or recoupment in these circumstances shall be limited to the extent of such loss or damage over and above the amount recoverable from said carrier.

"Fifth. When such private property is destroyed or captured by the enemy, or is destroyed to prevent

its falling into the hands of the enemy, or is abandoned on account of lack of transportation or by reason of military emergency requiring its abandonment, or is otherwise lost in the field during campaign."

This reenactment by Congress expressly making loss without fault or negligence a distinct ground of recovery strongly emphasizes the reasonableness of the construction of the previous act of 1885 to the same effect. That construction prevailed in the Treasury from 1885 to 1893, and again from 1896 to 1913, and was in 1918 made the statutory rule. It recognizes that a man in the military service can not choose the place to store or use his property, but must put it where the exigencies of the service require. Perhaps it may be stored as his own judgment would dictate in a substantial brick structure; perhaps military expediency as understood by his superior officers may require it to be placed in an insecure tent exposed to the violence of the elements or to hostile raids. An officer or soldier in the military service is deprived of that liberty of action which permits a citizen to safeguard his own property.

In *Purssell* v. *United States*, 46 C. Cls. 509 (1911), where an officer regularly stationed at San Francisco, was on leave of absence at the time of the earthquake and fire of April, 1906, and lost his property by the destruction of the building in which it was stored without any fault or negligence on his part, he was held entitled to recover.

In 1914 the Court of Claims on the authority of the *Purssell* case, gave judgment in favor of Lieut. Olin R. Booth, U. S. A., for personal property lost or destroyed in the military service without fault or negligence on his part and while he was giving attention to the saving of property of the United States in danger at the

same time and under similar circumstances. An appeal was taken to this court. In 1916, just as the case was about to come on for hearing, the appeal was dismissed by the Solicitor-General (*United States* v. *Booth*, No. 192, October Term, 1915; 241 U. S. 683, dismissing appeal from 49 C. Cls. 699. No opinion in either court).

These decisions were reviewed and reaffirmed in *Newcomer* v. *United States*, 51 C. Cls. 408, 511, from which no appeal was taken.

Application to this Case.

The loss of the property in this case was brought within two distinct clauses of the statute. By clause one the claim is allowable when without fault or negligence on the part of the claimant. By clause three the claim is allowable where the loss or destruction was in consequence of the claimant having given his attention to saving property belonging to the United States in danger at the same time and under similar circumstances. Either of these circumstances is sufficient to warrant a recovery. Both are found in this case to exist.

The camp was on low ground peculiarly exposed to inundation. The hurricane was exceptional in violence and duration. It totally wrecked and destroyed all the tents as well as the wooden structures belonging to the government.

The property was placed where it was by reason of the exigencies of the service. Military orders based on exigencies of the service required the officer to expose his personal property in such a situation in a tent or temporary shack. And even if liability to such damage was shared by the public generally, this does not pre-

vent it from being an accident arising out of the military service.

A similar question was before the English House of Lords in *Dennis* v. *White*, L. R. 1917 Appeal Cases, 479, a case under the workmen's compensation act, involving an accident to an employee while riding a bicycle in the streets of London in the performance of his duties. The act allows damages to be recovered for any accident arising "out of and in the course of the employment" (*Thom* v. *Sinclair*, L. R. 1917, App. Cas. 127, 132, 135). The Lord Chancellor (Lord Finlay) said (pp. 481, 482):

"The only question is whether the accident arose out of the employment. It is not disputed that the appellant was riding the bicycle in the course of his employment, and by orders of his employer. The risk of collision under such circumstances is incidental to the use of the bicycle; it is a risk inherent in the nature of the employment, and it was the cause of the accident. It follows that the accident arose out of the employment. It is quite immaterial that the risk was one which was shared by all members of the public who use bicycles for such a purpose. Such as it was, it was a risk to which the appellant was exposed in carrying out the orders of his employer.

"If a servant in the course of his master's business has to pass along the public street, whether it be on foot or on a bicycle, or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment. The frequency or infrequency of the occasion on which the risk is incurred has nothing to do with the question whether an accident resulting from that risk arose out of the employment. The use of the streets by the workman merely to get to or from his work of course stands on a different footing altogether, but as soon as it is established that the work itself involves exposure to the perils of the

streets the workman can recover for any injury so occasioned. As it was put by Lord Parmoor in his judgment in *Thom* v. *Sinclair*, 1917 App. Cas. 127, 145, in this House, 'The fact that the risk may be common to all mankind does not disentitle a workman to compensation if in the particular case it arises out of the employment.'"

And with this view agreed all the other judges.

JURISDICTION OF THE COURT OF CLAIMS.

The act of 1885 opens by providing "That the proper accounting officers of the Treasury" shall settle the claims. Such a provision invests the accounting officers with no exclusive jurisdiction. On the contrary, it is their failure to give the relief provided by the act which affords occasion for the exercise of jurisdiction by the Court of Claims.

In *United States* v. *American Tobacco Company*, 166 U. S. 468, a statute provided: "The Commissioner of Internal Revenue may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem" stamps spoiled or destroyed. It was held that where the executive officer failed to afford the relief required by the statute the party was entitled to sue and recover in the Court of Claims.

In *Medbury* v. *United States*, 173 U. S. 492, the statute provided that in cases of erroneous entries of public land, "The Secretary of the Interior shall cause to be repaid to the person who made such entry" the fees, commissions, purchase money, etc. Where the Secretary failed to perform the duty imposed by the act the party was held entitled to a remedy in the Court of Claims.

In *Parish* v. *MacVeagh*, 214 U. S. 124, it was held (par. 3 of syllabus, p. 125):

"Under the act of February 17, 1903, c. 559, 32 Stat. L. 1612, directing the Secretary of the Treasury 'to determine and ascertain the full amount which should have been paid to Parish if the contract had been carried out in full without change or default by either party' and to issue his warrant therefor, no judicial duty devolved upon the Secretary, nor has the Secretary power to determine what was right or proper, but only the administrative duty of ascertaining the amount and paying the same; and, the amount having been ascertained, the claimant is entitled to a writ of mandamus directing the Secretary to issue his warrant therefor."

In *McLean* v. *United States*, 226 U. S. 374, where the act (top p. 377) begins, "That the proper accounting officers be, and they are hereby directed to settle and adjust" a certain claim, the court, by Mr. Justice McKenna, said, p. 378:

"The jurisdiction of the Court of Claims to entertain the action was attacked in that court and is attacked here, the contention being that the act for the relief of appellant 'constituted the accounting officers and not the courts the tribunal to settle the accounts.' The court ruled against the contention, and rightly. It is not necessary to repeat its reasoning. The duties of the accounting officers were, as the court said, administrative, not judicial, and as the rights of appellant arose under an act of Congress the court had jurisdiction to determine them. *Medbury* v. *United States*, 173 U. S. 492."

In the court below, *Nichols* v. *United States*, 7 Wall. 122, was cited as authority in favor of the exclusive jurisdiction of the accounting officers and against that of the Court of Claims. But that case was impliedly, if not expressly, overruled in *United States* v. *Emery*, 237 U. S. 28, in which the following passage of the opin-

ion (pp. 31, 32) answers the technical objections made to the maintenance of the present action:

"The jurisdiction over suits against the United States under Sec. 24, Twentieth, of the Judicial Code, extends to 'all claims not exceeding $10,000 founded upon the Constitution of the United States or any law of Congress.' However, gradually the result may have been approached in the earlier cases it now has become accepted law that claims like the present are 'founded upon' the revenue law. The argument that there is a distinction between claims 'arising under' (Judicial Code, Sec. 24, First) and those 'founded upon' (*id.* Sec. 24, Twentieth), a law of the United States rests on the inadmissible premise that the great act of justice embodied in the jurisdiction of the Court of Claims is to be construed strictly and read with an adverse eye."

PROVISOS OF ACT OF 1885.

One proviso of the act of 1885 reads:

"That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered."

This language does not, any more than the opening clause of the act, confer exclusive jurisdiction on the accounting officers.

The proviso, when read with the previous portion of the act, refers to departmental action by the accounting officers. The claim in this case has not been "acted on under authority of this act." The action required by this act is that the accounting officers shall "examine into, ascertain and determine the value of the private property lost," etc. This in the present case has not been done. The Auditor for the War Department disallowed the claim, and the disallow-

ance was affirmed by the Comptroller of the Treasurer (Finding II, at end; some further particulars given in petition, Par. 3).

The claim was therefore never "acted on under authority of this act."

The further language is equally inapplicable. A claim so acted on "shall be held as finally determined, and shall never thereafter be reopened or considered."

This language applies to the tribunal by which the claim was first decided. A claim once rejected by the accounting officers, upon which suit is brought in the Court of Claims, is not "reopened." A proceeding in that court is not an appellate proceeding "reopening" the settlements of the accounting officers. It is an original and independent proceeding.

Congress has by a number of laws, the principal of which are the Dockery act, July 31, 1894, sections 3 to 25 (28 Stat. 205–211) and the Tucker act (24 Stat. 505), reenacted as Chapter VII of the Judicial Code, established two sets of tribunals for the consideration of all sorts of claims against the United States.

The first are the accounting officers, consisting of one Comptroller and six Auditors, who are administrative and not judicial officers.

The other set are the Court of Claims and District Courts having concurrent jurisdiction therewith, acting in a judicial capacity.

The general policy of legislation is that the acts of the accounting officers shall not be final, but that the courts shall be open to a party dissatisfied with their rulings. Intention should not be imputed to Congress to make an exception of the present class of cases. No reason can be suggested why the accounting officers' decisions should have a greater degree of finality in

these than in other cases. There is no reason to suppose that Congress intended to alter, with respect to this class of claims alone, the whole system established by it for the adjudication of claims against the United States.

A question almost identical was considered by this court in *United States* v. *Harmon*, 147 U. S. 268. That case involved the construction of a proviso to Section 2 of the Tucker act, "That nothing in this section shall be construed as giving to either of the courts herein mentioned jurisdiction to hear and determine * * * claims which have heretofore been rejected, or reported on adversely, by any court, department or commission authorized to hear and determine the same" (p. 272).

The court quoted with approval nearly all the opinion delivered by Mr. Justice Gray, in the Circuit Court (43 Fed. 560). After a long line of reasoning very pertinent to the present case, but too long to include here (pp. 272–276), the court quoted with approval the following (p. 276):

"We can not believe that the act of 1887, entitled 'An Act to provide for the bringing of suits against the government of the United States,' and the manifest scope and purpose of which are to extend the liability of the government to be sued, was intended to take away a jurisdiction already existing, and to give to the decisions of accounting officers an authority and effect which they never had before."

In *Hardie* v. *United States*, 39 C. Cls. 250, the Court held that a provision that certain claims shall be "forever barred, and shall not be received, considered or audited by any Department of the Government" referred to the executive departments, and had no application to the right of suit in the Court of Claims.

Another proviso of the act is "That the liability of the government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion shall decide to be reasonable, useful, necessary and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty."

Much of what has been said in regard to the previous proviso applies to this one. The decision of the Secretary of War required by this provision is one of the steps of the executive process of accounting, but is not essential to a recovery after the matter has become litigated.

In *Wisconsin Central Railroad* v. *United States*, 164 U. S. 190, 205, the court said:

"The Postmaster General in directing payment of compensation for mail transportation, under the statutes providing the rate and basis thereof, does not act judicially, and whatever the conclusiveness of executive acts so far as executive departments are concerned, as a rule of administration, it has long been settled that the action of executive officers in matters of account and payment can not be regarded as a conclusive determination when brought in question in a court of justice."

To the same effect are *United States* v. *American Tobacco Co.*, 166 U. S. 468 and *Parish* v. *MacVeagh*, 214 U. S. 124 (*ante*, pp. 9, 10).

In the *McLean* case, referred to *ante*, p. 10, the fact that the claimant was "unable to furnish the certificate required by statute to secure commutation for forage and servants' pay" was treated as no bar to a recovery (226 U. S., middle p. 383).

Still, the strictest requirement of the statute in that

respect has been met. In this case the Secretary of War has certified, following the language of the statute, "that the following articles were reasonable, useful, necessary and proper," etc. (Finding II, Record, p. 5). This is all that is required.

Conclusion.

The claimant in this case lost his property in the military service of the United States. He lost it by an overwhelming catastrophe without any fault or negligence on his part, and while he was engaged in saving the property of the United States in danger at the same time and under similar circumstances. The law clearly entitles him to be paid.

The defense to this claim rests entirely upon a palpable misconstruction of the statute by the accounting officers of the Treasury, which it is now insisted that this court must sustain. This theory of finality of decisions of the accounting officers has been repeatedly repudiated by this court.

The judgment of the Court of Claims should be affirmed.

George A. King,
William B. King,
William E. Harvey,
Attorneys for Appellee.

Supreme Court of the United States.

October Term, 1918

THE UNITED STATES, *Appellant*,
v.
CONRAD S. BABCCCK.
No. 708.

MOTION TO PLACE ON SUMMARY DOCKET.

Now comes the appellee, Conrad S. Babcock, by his attorneys and moves that this cause be placed on the summary docket on the ground that it involves a simple question of statutory construction as to the loss of a horse by an officer of the United States Army in the military service, and requires only a brief oral argument.

GEORGE A. KING,
WILLIAM B. KING,
WILLIAM E. HARVEY,
Attorneys for Appellee.

I concur in the above motion.

ALEX. C. KING,
Solicitor General.

SUPREME COURT OF THE UNITED STATES.

Nos. 708 and 915.—October Term, 1918.

The United States, Appellant,		
708	*vs.*	
Conrad S. Babcock.		Appeals from the Court of Claims.
The United States, Appellant,		
915	*vs.*	
Herbert B. Hayden.		

[June 2, 1919.]

Mr. Justice Brandeis delivered the opinion of the Court.

These cases, which were argued together, are appeals by the United States from judgments entered in the Court of Claims. In each an officer in the army recovered compensation under the Act of March 3, 1885, c. 335, 23 Stat. 350, for the loss, while in the service, without fault or negligence on his part, of privately owned personal property. In each case the claim had been duly presented within two years of the occurrence of the loss, and the Secretary of War had decided that the articles in question were "reasonable, useful, necessary, and proper for" such officer "while in quarters, engaged in the public service, in the line of duty."

In the Babcock case the horse of a captain stationed at the Presidio died in 1910 of strangulation because the Government furnished as the forage ration barley with the awns on it. In the Hayden case, a lieutenant stationed at Texas City, Texas, lost in 1915 his personal effects during a hurricane and inundation, while he was endeavoring to save the property of the Government and of others as well as his own. The claim for the horse had been disallowed by the Auditor of the War Department on the ground that "the death of officer's horse was not caused by any exigency of the service, nor from a cause incident to or produced by the military service." He had disallowed the claim for the personal effects because "the property was not lost or destroyed by being

shipped on an unseaworthy vessel, nor by reason of the claimant giving his attention to saving property belonging to the United States"; and the Auditor's decision was affirmed on appeal by the Comptroller of the Treasury. The Auditor made no finding as to the value of the property lost. This was fixed by the Court of Claims at $200 for the horse and $333 for the personal effects; and for these amounts it entered judgments on the authority of *Newcomber* v. *United States*, 51 C. Cls. 408, and *Andrews* v. *United States*, 52 C. Cls. 373. The loss in each case occurred prior to April 5, 1917, so that the rights of the parties are not affected by the provisions of the Act of March 28, 1918, c. 28, 40 Stat. 459, 479-480, or Chapter VI of the Act of July 9, 1918, c. 143; 40 Stat. 845, 880-1.

The questions whether the Act of March 3, 1885 authorizes recovery for horses under any circumstances and under what circumstances it authorizes recovery for other personal property have long been the subject of controversy in the Auditing Department and in that of the Comptroller of the Treasury. See 20 Decisions of the Comptroller 238. But here we are confronted with the preliminary enquiry: Has Congress conferred upon the Court of Claims jurisdiction to determine in any case whether recovery may be had under that statute for an article lost or destroyed? The right asserted is based upon the provision which declares, "That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service, under the following circumstances: . . .", and that "the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage."

These general rules are well settled: (1) That the United States, when it creates rights in individuals against itself, is under no obligation to provide a remedy through the courts. *United States ex rel. Dunlap* v. *Black*, 128 U. S. 40; *Ex parte Atocha*, 17 Wall. 439; *Gordon* v. *United States*, 7 Wall. 188, 195; *DeGroot* v. *United States*, 5 Wall. 419, 431-433; *Comegys* v. *Vasse*, 1 Pet. 193, 212. (2) That where a statute creates a right and provides a special remedy, that remedy is exclusive. *Wilder Manufacturing Co.* v. *Corn Products Co.*, 236 U. S. 165, 174-175; *Arnson* v. *Murphy*, 109 U. S. 238;

Barnet v. *National Bank*, 98 U. S. 555, 558; *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 35. Still the fact that the right and the remedy are thus intertwined might not, if the provision stood alone, require us to hold that the remedy expressly given excludes a right of review by the Court of Claims, where the decision of the special tribunal involved no disputed question of fact and the denial of compensation was rested wholly upon the construction of the act. See *Medbury* v. *United States*, 173 U. S. 492, 498; *Parish* v. *MacVeagh*, 214 U. S. 124; *McLean* v. *United States*, 226 U. S. 374; *United States* v. *Laughlin*, No. 200, decided April 14, 1919. But here Congress has provided, "That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered." These words express clearly the intention to confer upon the Treasury Department exclusive jurisdiction and to make its decision final. The case of *United States* v. *Harmon*, 147 U. S. 268, strongly relied upon by claimants, has no application. Compare *D. M. Ferry & Co.* v. *United States*, 85 Fed. 550, 557.

In the Babcock case claimant insists also that section 3482 of the Revised Statutes as amended by Act of June 22, 1874, c. 395, 18 Stat. 193, affords a basis for the recovery. That section provided for reimbursement for horses lost in the military service, among other things "in consequence of the United States failing to supply sufficient forage". The 1874 amendment provided for reimbursement in any case "where the loss resulted from any exigency or necessity of the military service, unless it was caused by the fault or negligence of such officers or enlisted men." Even if these statutes were applicable to facts like those presented here, there could be no recovery; because under the Acts of January 9, 1883, c. 15, 22 Stat. 401, and August 13, 1888, c. 868, 25 Stat. 437, the right to present claims under section 3482 of the Revised Statutes as amended finally expired in 1891. See *Griffis* v. *United States*, 52 Ct. Cls. 1, 170.

The Court of Claims was without jurisdiction in either case, and the judgments are

Reversed.